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COMPTEL v. Federal Communications Commission

United States Court of Appeals, District of Columbia Circuit - November 3, 2020 - F.3d - 2020 WL 6437312

Competitive local exchange carrier and California's telecommunications regulator filed petitions for review of order of the Federal Communications Commission (FCC), which determined that incumbent local exchange carriers no longer dominated telecommunications market, and exercised its authority under the Telecommunications Act to forbear from enforcing wholesale pricing requirement and analog loops network element of unbundling requirement it had previously imposed to foster competition in providing voice services for resale to customers.

Following consolidation of proceedings, incumbent carrier intervened in support of FCC.

The Court of Appeals holds that:

- FCC's decision to forbear from enforcing wholesale pricing requirement was not arbitrary and capricious, and
- Findings and modes of analysis that were allegedly inconsistent with FCC's past orders did not render its forbearance order arbitrary and capricious.

Federal Communication Commission's (FCC) decision to forbear, under the Telecommunications Act, from enforcing wholesale pricing requirement it had previously imposed to foster competition in providing voice services for resale to customers was not arbitrary and capricious under the Administrative Procedure Act (APA), where it reasonably focused on national market for voice telecommunication services, rather than local markets separately, it found that copper wire advantage was of rapidly declining importance due to competing modes of voice transmission, and it found that incumbents' possession of copper loops no longer gave them meaningful market power in national voice market, even though there were isolated geographic locations, especially rural areas, where competing modes were less robust.

Federal Communication Commission's (FCC) decision to forbear, under the Telecommunications Act, from enforcing analog loops network element of unbundling requirement it had previously imposed to foster competition in providing voice services for resale to customers was not arbitrary and capricious under the Administrative Procedure Act (APA), although there were times when only copper loops, being self-powered, could conduct 9-1-1 calls when power went out, and FCC did not engage in detailed discussion about negative impact on public safety, where forbearance from unbundling requirement would not reduce availability of line-powered copper networks.

Findings and modes of analysis that were allegedly inconsistent with Federal Communication Commission's (FCC) past orders did not render arbitrary and capricious its order, pursuant to its authority under the Telecommunications Act, to forbear from enforcing wholesale pricing requirement and analog loops network element of unbundling requirement it had previously imposed to foster competition in providing voice services for resale to customers, where FCC took different positions over last few decades because market for voice services and relevant technology had

changed dramatically, it explained how market had evolved, and it reasonably concluded that intermodal competition was now sufficient to discipline prices.